

## CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1788

**Citations Affected:** IC 6-7-2-11; IC 7.1-6-2-6; IC 7.1-6-2-8; IC 16-18-2-323.1; IC 16-18-2-323.4; IC 16-41-37; IC 24-3; IC 35-46-1.

**Synopsis:** Sale of tobacco. Conference committee report for EHB 1788. Provides that a cigarette distributor with five consecutive years of good credit standing with the state is not required to post a bond as a condition of paying for revenue stamps within 30 days of the purchase date. Requires a cigarette distributor to include an invoice in each shipment or delivery of cigarettes to a retailer. Requires a retailer to keep an invoice for at least two weeks. Authorizes the department of state revenue (department) or the alcohol and tobacco commission (commission) to impose a civil penalty upon a retailer who fails to produce an invoice or other evidence that cigarettes were purchased from a legitimate distributor. Permits the state to seize undocumented cigarettes. Increases the penalty for selling cigarettes below cost from a Class C to a Class A infraction and deposits monetary judgments in the commission's enforcement and administration fund. Prohibits smoking on a school bus during a school week or a school activity. Renames the youth tobacco education and enforcement fund the Richard D. Doyle youth tobacco education and enforcement fund. Provides that excess escrow payments made in Indiana by a nonparticipating tobacco product manufacturer revert to the nonparticipating tobacco product manufacturer. Requires a tobacco product manufacturer to: (1) certify that it is a participating manufacturer in the tobacco master settlement agreement or maintain a qualified escrow fund; and (2) list the manufacturer's brand families of cigarettes. Requires the attorney general to electronically publish a directory of tobacco product manufacturers and brand families and notify a cigarette distributor at least 30 days before the attorney general removes a tobacco product manufacturer or brand family from the directory. Prohibits the attorney general from restoring a tobacco product manufacturer or brand family to the directory until the tobacco product manufacturer refunds any money due a distributor, stamping agent, or retailer. Requires a foreign nonparticipating manufacturer to appoint an agent for service of process. Provides that: (1) the department may revoke or suspend the license of; and (2) the department or commission may impose a civil penalty on; a distributor or stamping agent that affixes a stamp on or sells cigarettes of a manufacturer or brand family that is not listed in the directory. Deposits the civil penalties in the commission's enforcement and administration fund. Allows the state to recover

the costs of an action to enforce the certification requirements. **(This conference committee report: (1) requires a distributor to include an invoice in each shipment or delivery of cigarettes to a retailer; (2) requires a retailer to retain each invoice for at least two weeks; (3) requires a distributor to provide an invoice to a retailer upon request; (4) prohibits smoking on a school bus during a school week or a school activity; (5) provides that excess escrow payments made in Indiana by a nonparticipating tobacco product manufacturer revert to the nonparticipating tobacco product manufacturer; (6) requires the attorney general to notify a cigarette distributor or stamping agent at least 30 days before the attorney general removes a tobacco product manufacturer or brand family from the directory; (7) prohibits the attorney general from restoring a tobacco product manufacturer or brand family to the directory until the tobacco product manufacturer refunds any money due a distributor, stamping agent, or retailer; (8) increases the penalty for selling cigarettes below cost from a Class C to a Class A infraction and deposits monetary judgments in the commission's enforcement and administration fund; and (9) deposits civil penalties for selling unlisted cigarettes in the commission's enforcement and administration fund.)**

**Effective:** July 1, 2003.

Adopted

Rejected

## CONFERENCE COMMITTEE REPORT

**MR. SPEAKER:**

*Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1788 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 6-7-1-17, AS AMENDED BY P.L.192-2002(ss),
- 3 SECTION 136, IS AMENDED TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2003]: Sec. 17. (a) Distributors who hold
- 5 certificates and retailers shall be agents of the state in the collection of
- 6 the taxes imposed by this chapter and the amount of the tax levied,
- 7 assessed, and imposed by this chapter on cigarettes sold, exchanged,
- 8 bartered, furnished, given away, or otherwise disposed of by
- 9 distributors or to retailers. Distributors who hold certificates shall be
- 10 agents of the department to affix the required stamps and shall be
- 11 entitled to purchase the stamps from the department at a discount of
- 12 one and two-tenths percent (1.2%) of the amount of the tax stamps
- 13 purchased, as compensation for their labor and expense.
- 14 (b) The department may permit distributors who hold certificates and
- 15 who are admitted to do business in Indiana to pay for revenue stamps
- 16 within thirty (30) days after the date of purchase. However, the
- 17 privilege is extended upon the express condition that:
- 18 (1) except as provided in subsection (c), a bond or letter of credit
- 19 satisfactory to the department, in an amount not less than the sales

price of the stamps, is filed with the department; and  
 (2) proof of payment is made of all local property, state income, and excise taxes for which any such distributor may be liable. The bond or letter of credit, conditioned to secure payment for the stamps, shall be executed by the distributor as principal and by a corporation duly authorized to engage in business as a surety company or financial institution in Indiana.

(c) If

~~(1) there is an increase in the amount of the tax imposed upon cigarettes under this chapter; and~~

~~(2) a distributor has at least five (5) consecutive years of good credit standing with the state, as of the effective date of the tax increase described in subdivision (1);~~

~~the amount of the bond required by subsection (b)(1) remains the same as before the increase in the tax on cigarettes took effect. the distributor shall not be required to post a bond or letter of credit under subsection (b).~~

SECTION 2. IC 6-7-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. Every distributor, upon the receipt of cigarettes taxed under this chapter, shall cause each individual package to have the requisite denomination and amount of stamps firmly affixed. Every retailer, upon receipt of cigarettes not having the proper amount of stamps firmly affixed, to each individual package, or stamped by a meter stamping machine, by a distributor shall stamp or firmly affix stamps immediately on each individual package. Provided, however, that any distributor engaged in interstate business, shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this chapter. Every distributor, at the time of shipping or delivering any cigarettes, shall make a duplicate invoice, showing complete details of each transaction, and shall retain the duplicate subject to the inspection by the department or its agent. **Every distributor shall include with each shipment or delivery of cigarettes an invoice showing complete details of the transactions. Every retailer shall retain for not less than two (2) weeks the invoice included with each shipment or delivery of cigarettes subject to inspection by the department or its agent. A retailer may request a duplicate invoice from a distributor.**

SECTION 3. IC 6-7-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. The department:

- (1) may revoke or suspend a license issued under this chapter for any violation of this chapter **or IC 6-7-1-18** by the licensee; and
- (2) may not issue a license under this chapter to an applicant within six (6) months after the revocation of that applicant's license.

SECTION 4. IC 7.1-6-2-6, AS AMENDED BY P.L.1-2002, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) The **Richard D. Doyle** youth tobacco education and enforcement fund is established. The fund shall be administered by the commission.

(b) Expenses of administering the fund shall be paid from money in

1 the fund.

2 (c) The treasurer of state shall invest the money in the fund not  
3 currently needed to meet the obligations of the fund in the same  
4 manner as other public money may be invested.

5 (d) Money in the fund at the end of a state fiscal year does not revert  
6 to the state general fund.

7 (e) Money in the fund shall be used for the following purposes:

8 (1) For youth smoking prevention education. The commission may  
9 contract with the state department of health or the office of the  
10 secretary of family and social services for youth smoking  
11 prevention education programs.

12 (2) For education and training of retailers who sell tobacco  
13 products. The commission may contract with education and  
14 training programs of the office of the secretary of family and social  
15 services, the division of mental health and addiction, enforcement  
16 officers, or a program approved by the commission.

17 (3) For the commission, for enforcement of youth tobacco laws.

18 SECTION 5. IC 7.1-6-2-8, AS ADDED BY P.L.204-2001, SECTION  
19 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
20 2003]: Sec. 8. (a) This section applies whenever a civil penalty payable  
21 to the **Richard D. Doyle** youth tobacco education and enforcement  
22 fund is imposed.

23 (b) The person liable for the civil penalty shall pay the full amount  
24 of the civil penalty to the commission within thirty (30) days after final  
25 judgment.

26 (c) A person who fails to pay a civil penalty within the time specified  
27 in subsection (b) is liable for a late penalty equal to the greater of the  
28 following:

29 (1) Twenty-five percent (25%) of the amount of the civil penalty  
30 imposed under IC 35-46-1.

31 (2) The lesser of the following:

32 (A) Twenty-five dollars (\$25) multiplied by the number of days  
33 that have elapsed after the date that the civil penalty was  
34 imposed by a court.

35 (B) Five thousand dollars (\$5,000).

36 (d) A person who fails to pay a civil penalty within the time specified  
37 in subsection (b) is liable for interest on the unpaid amount of the:

38 (1) civil penalty imposed by a court; and

39 (2) late penalty imposed under this section.

40 The interest rate is the adjusted rate of interest as determined under  
41 IC 6-8.1-10-1 payable from the date that payment of the amount was  
42 due.

43 (e) A person who fails to pay a civil penalty within the time specified  
44 in subsection (b) is liable for the reasonable documented out-of-pocket  
45 expenses incurred in pursuing collection efforts.

46 (f) The commission shall collect the following:

47 (1) Civil penalties imposed by a court.

48 (2) Late penalties imposed under this section.

49 (3) Interest imposed under this section.

50 (4) Reasonable documented out-of-pocket expenses incurred in  
51 pursuing collection efforts.

(g) Late penalties and interest imposed under this section shall be deposited in the **Richard D. Doyle** youth tobacco education and enforcement fund established by section 6 of this chapter.

SECTION 6. IC 16-18-2-323.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 323.1. "School bus", for purposes of IC 16-41-37, has the meaning set forth in IC 16-41-37-2.3.**

SECTION 7. IC 16-18-2-323.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 323.4. "School week", for purposes of IC 16-41-37, has the meaning set forth in IC 16-41-37-2.7.**

SECTION 8. IC 16-41-37-2.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 2.3. As used in this chapter, "school bus" means a motor vehicle that is:**

- (1) designed and constructed for the accommodation of at least ten (10) passengers;**
- (2) owned or operated by a public or governmental agency, or privately owned and operated for compensation; and**
- (3) used for the transportation of school children to and from the following:**
  - (A) School.**
  - (B) School athletic games or contests.**
  - (C) Other school functions.**

SECTION 9. IC 16-41-37-2.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 2.7. As used in this chapter, "school week" means a normal Monday through Friday week that contains three (3) or more days that each contain more than four (4) hours of classroom instruction.**

SECTION 10. IC 16-41-37-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 4. A person who smokes:**

- (1) in a public building, except in an area designated as a smoking area under section 5 of this chapter;**
- (2) in the retail area of a grocery store or drug store that is designated as a nonsmoking area by the store's proprietor; or**
- (3) in the dining area of a restaurant that is designated and posted as the restaurant's nonsmoking area by the restaurant's proprietor;**
- or**
- (4) in a school bus during a school week or while the school bus is being used for a purpose described in section 2.3(3) of this chapter;**

commits a Class B infraction. However, the violation is a Class A infraction if the person has at least three (3) previous unrelated judgments for violating this section that are accrued within the twelve (12) months immediately preceding the violation.

SECTION 11. IC 24-3-2-2, AS AMENDED BY P.L.204-2001, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 2. Unless the context in this chapter requires**

1 otherwise, the term:

2 (a) "Cigarette" shall mean and include any roll for smoking made  
3 wholly or in part of tobacco, irrespective of size or shape and  
4 irrespective of tobacco being flavored, adulterated, or mixed with any  
5 other ingredient, where such roll has a wrapper or cover made of paper  
6 or any other material; provided the definition in this paragraph shall not  
7 be construed to include cigars.

8 (b) "Person" or the term "company", used in this chapter  
9 interchangeably, means and includes any individual, assignee, receiver,  
10 commissioner, fiduciary, trustee, executor, administrator, institution,  
11 bank, consignee, firm, partnership, limited liability company, joint  
12 vendor, pool, syndicate, bureau, association, cooperative association,  
13 society, club, fraternity, sorority, lodge, corporation, municipal  
14 corporation, or other political subdivision of the state engaged in  
15 private or proprietary activities or business, estate, trust, or any other  
16 group or combination acting as a unit, and the plural as well as the  
17 singular number, unless the intention to give a more limited meaning  
18 is disclosed by the context.

19 (c) "Distributor" shall mean and include every person who sells,  
20 barter, exchanges, or distributes cigarettes in the state of Indiana to  
21 retail dealers for the purpose of resale, or who purchases for resale  
22 cigarettes from a manufacturer of cigarettes or from a wholesaler,  
23 jobber, or distributor outside the state of Indiana who is not a  
24 distributor holding a registration certificate issued under the provisions  
25 of IC 6-7-1.

26 (d) "Retailer" shall mean every person, other than a distributor, who  
27 purchases, sells, offers for sale, or distributes cigarettes to consumers  
28 or to any person for any purpose other than resale, irrespective of  
29 quantity or amount or the number of sales.

30 (e) "Sell at retail", "sale at retail", and "retail sales" shall mean and  
31 include any transfer of title to cigarettes for a valuable consideration  
32 made in the ordinary course of trade or usual conduct of the seller's  
33 business to the purchaser for consummation or use.

34 (f) "Sell at wholesale", "sale at wholesale", and "wholesale sales"  
35 shall mean and include any transfer of title to cigarettes for a valuable  
36 consideration made in the ordinary course of trade or usual conduct of  
37 a distributor's business.

38 (g) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes  
39 to the retailer or distributor, as the case may be, or the replacement cost  
40 of cigarettes to the retailer or distributor, as the case may be, within  
41 thirty (30) days prior to the date of sale, in the quantity last purchased,  
42 whichever is the lower, less all trade discounts and customary  
43 discounts for cash, plus the cost at full face value of any stamps which  
44 may be required by IC 6-7-1, if not included by the manufacturer in his  
45 selling price to the distributor.

46 (h) "Department" shall mean the alcohol and tobacco commission **or**  
47 its duly authorized assistants and employees. ~~and any other board,~~  
48 ~~commission, agency, or other entity of the state of Indiana which may~~  
49 ~~be designated by the governor to administer and enforce the provisions~~  
50 ~~of this chapter, and the governor is hereby vested with power and~~  
51 ~~authority to designate and to transfer to another department, board,~~

commission, agency, or other entity of the state of Indiana the administration and enforcement of the provisions of this chapter.

(i) "Cost to the retailer" shall mean the basic cost of cigarettes to the retailer, plus the cost of doing business by the retailer as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses paid or incurred and must include without limitation labor (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising; however, any retailer who, in connection with the retailer's purchase, receives not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or in part, discounts ordinarily allowed on purchases by a distributor shall, in determining costs to the retailer pursuant to this section, add the cost to the distributor, as defined in paragraph (j), to the basic cost of cigarettes to said retailer as well as the cost of doing business by the retailer. In the absence of proof of a lesser or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer shall be presumed to be eight percent (8%) of the basic cost of cigarettes to the retailer. In the absence of proof of a lesser or higher cost of doing business, the cost of doing business by the retailer, who in connection with the retailer's purchase receives not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or in part, the discounts ordinarily allowed upon purchases by a distributor, shall be presumed to be eight percent (8%) of the sum of the basic cost of cigarettes plus the cost of doing business by the distributor.

(j) "Cost to the distributor" shall mean the basic cost of cigarettes to the distributor, plus the cost of doing business by the distributor as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include without limitation labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising. In the absence of proof of a lesser or higher cost of doing business by the distributor making the sale, the cost of doing business by the wholesaler shall be presumed to be four percent (4%) of the basic cost of cigarettes to the distributor, plus cartage to the retail outlet, if performed or paid for by the distributor, which cartage cost, in the absence of proof of a lesser or higher cost, shall be deemed to be one-half of one percent (0.5%) of the basic cost of cigarettes to the distributor.

**(k) "Registration certificate" refers to the registration certificate issued to cigarette distributors by the department of state revenue under IC 6-7-1-16.**

SECTION 12. IC 24-3-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) It is a ~~Class E~~ **Class A** infraction for a retailer or distributor, with intent to injure competitors or destroy or substantially lessen competition, to offer to sell or sell at retail or wholesale cigarettes at less than the cost to him. The registration certificate held by such a distributor under IC 6-7-1 may be revoked by the department for the balance of the term thereof.

(b) Evidence of offering to sell or sale of cigarettes by any retailer or distributor at less than the cost to him is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

**(c) Notwithstanding IC 34-28-5-5(c), a judgment for a violation of this section shall be deposited in the enforcement and administration fund established under IC 7.1-4-10-1.**

SECTION 13. IC 24-3-2-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4.7. (a) A retailer shall produce an invoice or other documentary evidence proving that the retailer obtained cigarettes or a tobacco product (as defined in IC 6-7-2-5) from a distributor that holds a valid registration certificate.

(b) Each day a retailer fails to produce an invoice or other evidence under subsection (a) constitutes a separate violation of this section.

(c) This subsection applies in addition to or instead of any other civil or criminal penalty. The department or the department of state revenue may impose on a retailer that violates subsection (a) a civil penalty that does not exceed the greater of:

- (1) five hundred percent (500%) of the retail value of the cigarettes described in subsection (a); or
- (2) five thousand dollars (\$5,000);

for each violation.

(d) In addition to any other penalty described in this section, the department or the department of state revenue may seize the cigarettes or other tobacco products for which the retailer is unable to produce the invoice or documentary evidence described in subsection (a). The seized cigarettes or other tobacco products shall be forfeited to the state and destroyed.

(e) Civil penalties collected under this chapter shall be deposited as follows:

- (1) Seventy percent (70%) to the enforcement and administration fund established under IC 7.1-4-10.
- (2) Thirty percent (30%) to the state general fund for the use of the department of state revenue.

SECTION 14. IC 24-3-3-13, AS ADDED BY P.L.223-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) Subsection (b) applies unless and until all or any part of subsection (b) is held to be unconstitutional or otherwise unenforceable. If all or any part of subsection (b) or the application of all or any part of subsection (b) to a person, an entity, or a circumstance is held to be unconstitutional or invalid by a court, the unconstitutionality or invalidity does not affect other provisions of this chapter, and subsection (c) controls. Subsection (c) applies unless and until all or any part of subsection (c) is held to be unconstitutional or otherwise unenforceable. If all or any part of subsection (c) or the application of all or any part of subsection (c) to a person, an entity, or a circumstance is held to be unconstitutional or invalid by a court, the unconstitutionality or invalidity does not affect other provisions of this chapter, and subsection (d) controls.

(b) A tobacco product manufacturer that places funds into escrow under section 12(2) of this chapter shall receive the interest or other appreciation on such funds as earned. The funds shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in Indiana. Funds shall be released from escrow under this subdivision:

(A) in the order in which they were placed into escrow; and

(B) only to the extent and at the time necessary to make payments required under such a judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount the tobacco product manufacturer is required to place in escrow on account of units sold in Indiana in a particular year exceeds the master settlement agreement payments the tobacco product manufacturer would have been required to make on account of units sold in Indiana if the tobacco product manufacturer were a participating manufacturer, as determined under section IX(i) of the master settlement agreement and after final determination of all adjustments, the excess payments shall be released from escrow and shall revert to the tobacco product manufacturer.

(3) To the extent not released from escrow under subdivision (1) or (2), funds shall be released from escrow and revert back to the tobacco product manufacturer twenty-five (25) years after the date on which the funds were placed into escrow.

(c) This subsection applies only if subsection (b) is held to be unconstitutional or otherwise unenforceable. A tobacco product manufacturer that places funds into escrow under section 12(2) of this chapter shall receive the interest or other appreciation on the funds as earned. The funds shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in Indiana. Funds shall be released from escrow under this subdivision:

(A) in the order in which they were placed into escrow; and

(B) only to the extent and at the time necessary to make payments required under such a judgment or settlement.

(2) To the extent not released from escrow under subdivision (1), funds shall be released from escrow and revert back to the tobacco product manufacturer twenty-five (25) years after the date on which the funds were placed into escrow.

(d) This subsection applies only if subsections (b) and (c) are held to be unconstitutional or otherwise unenforceable. A tobacco product manufacturer that places funds into escrow under section 12(2) of this chapter shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any

releasing party located or residing in Indiana. Funds shall be released from escrow under this subdivision:

(A) in the order in which they were placed into escrow; and

(B) only to the extent and at the time necessary to make payments required under such a judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to the tobacco product manufacturer.

(3) To the extent not released from escrow under subdivision (1) or (2), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five (25) years after the date on which the funds were placed into escrow.

SECTION 15. IC 24-3-5.4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

**Chapter 5.4. Master Settlement Agreement Protection Act**

**Sec. 1. As used in this chapter, "brand family" means cigarettes that are:**

(1) sold under the same trademark; and

(2) differentiated from one another by means of modifiers such as menthol, lights, kings, or 100s.

The term includes the use of a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indicia of product identification that is identical or similar to or identifiable with a previously known brand of cigarettes.

**Sec. 2. As used in this chapter, "cigarette" has the meaning set forth in IC 24-3-3-5.**

**Sec. 3. As used in this chapter, "commission" means the alcohol and tobacco commission created by IC 7.1-2-1-1.**

**Sec. 4. As used in this chapter, "department" means the department of state revenue.**

**Sec. 5. As used in this chapter, "distributor" means a person that:**

(1) purchases cigarettes on which the tax under IC 6-7-1 is not paid; and

(2) stores, sells, or otherwise disposes of the cigarettes.

**Sec. 6. As used in this chapter, "master settlement agreement" has the meaning set forth in IC 24-3-3-6.**

**Sec. 7. As used in this chapter, "nonparticipating manufacturer" means a tobacco product manufacturer that is not a participating manufacturer.**

**Sec. 8. As used in this chapter, "participating manufacturer" has the meaning set forth in IC 24-3-3-12(1).**

1       Sec. 9. As used in this chapter, "qualified escrow fund" has the  
2 meaning set forth in IC 24-3-3-7.

3       Sec. 10. As used in this chapter, "stamping agent" means a  
4 person that may affix a stamp to a package of cigarettes under  
5 IC 6-7-1-15.

6       Sec. 11. As used in this chapter, "tobacco product manufacturer"  
7 has the meaning set forth in IC 24-3-3-10.

8       Sec. 12. As used in this chapter, "units sold" has the meaning set  
9 forth in IC 24-3-3-11.

10       Sec. 13. (a) Not later than April 30 of each year, a tobacco  
11 product manufacturer whose cigarettes are sold in Indiana,  
12 whether directly or through a distributor, retailer, or similar  
13 intermediary, shall certify to the department and the attorney  
14 general that, as of the date of the certification, the tobacco product  
15 manufacturer is:

- 16           (1) a participating manufacturer; or
- 17           (2) in full compliance with IC 24-3-3.

18       The department shall prescribe the form of the certification.

19       (b) A participating manufacturer shall include in a certification  
20 under subsection (a) a list of the participating manufacturer's  
21 brand families. The participating manufacturer shall update the  
22 list by filing a supplemental certification with the department and  
23 the attorney general not less than thirty (30) days before the  
24 participating manufacturer adds a brand family or otherwise  
25 modifies the list of brand families.

26       (c) A nonparticipating manufacturer shall include in a  
27 certification under subsection (a) a list of the nonparticipating  
28 manufacturer's brand families, including the following:

- 29           (1) A separate listing of each brand family that was sold in  
30 Indiana during the calendar year before the year in which the  
31 certification is filed.
- 32           (2) A separate listing of the number of units sold for each  
33 brand family that was sold in Indiana during the calendar year  
34 before the year in which the certification is filed.
- 35           (3) An indication of any brand family that was sold in Indiana  
36 during the calendar year before the year in which the  
37 certification is filed and that is not sold in Indiana as of the  
38 date of the certification.
- 39           (4) The name and address of any other manufacturer of a  
40 brand family that was sold in Indiana during the calendar year  
41 before the year in which the certification is filed.

42       (d) A nonparticipating manufacturer shall file a supplemental  
43 certification with the attorney general not less than thirty (30) days  
44 before the nonparticipating manufacturer adds to or otherwise  
45 modifies its list of brand families.

46       (e) A nonparticipating manufacturer shall certify the following  
47 in a certification under subsection (a):

- 48           (1) The nonparticipating manufacturer:
  - 49               (A) is registered to do business in Indiana; or
  - 50               (B) has appointed an agent for service of process and
  - 51               provided notice under section 16 of this chapter.

**(2) The nonparticipating manufacturer has:**

**(A) established and continues to maintain a qualified escrow fund; and**

**(B) executed a qualified escrow agreement that:**

**(i) the attorney general has approved; and**

**(ii) governs the qualified escrow fund.**

**(3) The nonparticipating manufacturer is in full compliance with:**

**(A) this section; and**

**(B) IC 24-3-3.**

**(4) The name, address, and telephone number of the financial institution that holds the nonparticipating manufacturer's qualified escrow fund.**

**(5) The account number and any subaccount numbers of the nonparticipating manufacturer's qualified escrow fund.**

**(6) The amounts and dates of deposits that the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in Indiana during the calendar year before the year in which the certification is filed, including any verification required by the attorney general.**

**(7) The amounts and dates of withdrawals or transfers of funds that the nonparticipating manufacturer made from a qualified escrow fund into which the nonparticipating manufacturer made or makes escrow payments under IC 24-3-3.**

**(f) A tobacco product manufacturer shall not include a brand family in the tobacco product manufacturer's certification under subsection (a) unless:**

**(1) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is considered the participating manufacturer's cigarettes for purposes of calculating the participating manufacturer's payments under the master settlement agreement for the year in which the certification is filed in the volume and shares determined under the master settlement agreement; or**

**(2) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is considered to be the nonparticipating manufacturer's cigarettes for purposes of IC 24-3-3-12(2).**

**(g) This section does not limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of IC 24-3-3.**

**(h) A nonparticipating manufacturer shall maintain all invoices and documentation of sales and any other relevant information for a period of five (5) years unless otherwise required by law to maintain the invoices, documentation of sales, or other relevant information for more than five (5) years.**

**Sec. 14. (a) Not later than July 1 of each year, the attorney general shall make available to the public by publishing on accessIndiana (as defined in IC 5-21-1-1.5) a directory listing all**

1 brand families listed in certifications filed under section 13 of this  
2 chapter.

3 (b) A directory described in subsection (a) shall not include the  
4 name or brand families of a nonparticipating manufacturer:

5 (1) that fails to comply with section 13 of this chapter; or

6 (2) whose certification fails to comply with section 13(c) or  
7 13(e) of this chapter, unless the attorney general determines  
8 that the failure has been remedied.

9 (c) The directory may not include a tobacco product  
10 manufacturer or a brand family if the attorney general concludes  
11 that:

12 (1) in the case of a nonparticipating manufacturer, all escrow  
13 payments required under IC 24-3-3-12 for any period for any  
14 brand family, whether or not listed by the nonparticipating  
15 manufacturer, have not been fully paid into a qualified escrow  
16 fund governed by a qualified escrow agreement that has been  
17 approved by the attorney general; or

18 (2) all outstanding final judgments, including interest on the  
19 judgments, for violations of IC 24-3-3 have not been fully  
20 satisfied for the tobacco product manufacturer or brand  
21 family.

22 (d) The attorney general shall update the directory as necessary  
23 to correct mistakes or to add or remove a tobacco product  
24 manufacturer or brand family to keep the directory in conformity  
25 with the requirements of this chapter.

26 (e) The attorney general shall post in the directory and transmit  
27 by electronic mail or other means to each distributor or stamping  
28 agent notice of any removal from the directory of a tobacco  
29 product manufacturer or brand family not later than thirty (30)  
30 days before the attorney general removes the tobacco product  
31 manufacturer or brand family from the directory.

32 (f) Unless otherwise provided in an agreement between a tobacco  
33 product manufacturer and a distributor or stamping agent, a  
34 distributor or stamping agent is entitled to a refund from a tobacco  
35 product manufacturer for any money paid by the distributor or  
36 stamping agent to the tobacco product manufacturer for any  
37 cigarettes of the tobacco product manufacturer or brand family  
38 that:

39 (1) are in the possession of the distributor or stamping agent  
40 on; or

41 (2) the distributor or stamping agent receives from a retailer  
42 after;

43 the date on which the tobacco product manufacturer or brand  
44 family is removed from the directory.

45 (g) Unless otherwise provided in an agreement between a retailer  
46 and a distributor, stamping agent, or tobacco product  
47 manufacturer, a retailer is entitled to a refund from a distributor,  
48 stamping agent, or tobacco product manufacturer for any money  
49 paid by the retailer to the distributor, stamping agent, or tobacco  
50 product manufacturer for any cigarettes of the tobacco product  
51 manufacturer or brand family that are in the possession of the

1 retailer on the date on which the tobacco product manufacturer or  
2 brand family is removed from the directory.

3 (h) The attorney general shall not restore a tobacco product  
4 manufacturer or brand family to the directory until the tobacco  
5 product manufacturer pays a distributor, stamping agent, or  
6 retailer any refund due under subsection (f) or (g).

7 (i) A distributor or stamping agent shall provide and update as  
8 necessary an electronic mail address to the attorney general for  
9 purposes of receiving a notification required by this chapter.

10 Sec. 15. A person may not:

11 (1) affix a stamp to a package or other container of cigarettes;  
12 or

13 (2) sell or offer or possess for sale in Indiana cigarettes;  
14 of a tobacco product manufacturer or brand family that is not  
15 listed in a directory under section 14 of this chapter.

16 Sec. 16. (a) A foreign nonparticipating manufacturer that has not  
17 registered to do business in Indiana shall, as a condition precedent  
18 to having the foreign nonparticipating manufacturer's brand  
19 families listed in a directory under section 14 of this chapter,  
20 appoint and engage without interruption the services of an agent  
21 in Indiana to act as the foreign nonparticipating manufacturer's  
22 agent for the service of process. Service on an agent under this  
23 section constitutes legal and valid service of process on the foreign  
24 nonparticipating manufacturer that appointed and engaged the  
25 services of the agent. The foreign nonparticipating manufacturer  
26 shall provide the following information to the department and the  
27 attorney general:

28 (1) The name, address, and telephone number of the agent.

29 (2) Proof of the appointment of the agent.

30 (3) The availability of the agent.

31 (4) Any other information required by the department or the  
32 attorney general.

33 (b) A foreign nonparticipating manufacturer shall provide notice  
34 to the department and the attorney general not less than thirty (30)  
35 days before the foreign nonparticipating manufacturer terminates  
36 the authority of an agent appointed under this section. The foreign  
37 nonparticipating manufacturer shall provide proof to the  
38 satisfaction of the attorney general of the appointment of a new  
39 agent not less than five (5) days before the foreign nonparticipating  
40 manufacturer terminates an existing agency appointment.

41 (c) If an agent terminates an agency appointment, the foreign  
42 nonparticipating manufacturer shall:

43 (1) notify the department and the attorney general of the  
44 termination not more than five (5) days after the termination;  
45 and

46 (2) provide proof to the satisfaction of the attorney general of  
47 the appointment of a new agent.

48 (d) A foreign nonparticipating manufacturer that:

49 (1) sells products in Indiana; and

50 (2) has not appointed an agent under this section;

51 is considered to have appointed the secretary of state as the foreign

1 nonparticipating manufacturer's agent. The appointment of the  
 2 secretary of state under this subsection as the foreign  
 3 nonparticipating manufacturer's agent does not satisfy the  
 4 condition precedent to having the foreign nonparticipating  
 5 manufacturer's brand families listed in a directory under section  
 6 14 of this chapter.

7 Sec. 17. (a) This section applies after July 31, 2003.

8 (b) Not later than January 20, April 20, July 20, and October 20  
 9 of a calendar year, a distributor or stamping agent shall submit the  
 10 following information to the department, the commission, and the  
 11 attorney general:

12 (1) A list by brand family of the total number of cigarettes for  
 13 which the distributor or stamping agent affixed stamps or  
 14 otherwise paid taxes during the immediately preceding three  
 15 (3) months.

16 (2) Any other information required by the department or the  
 17 attorney general.

18 The distributor or stamping agent shall maintain and make  
 19 available to the department, the commission, and the attorney  
 20 general for a period of five (5) years all invoices and  
 21 documentation of sales of all nonparticipating manufacturer  
 22 cigarettes and any other information that the distributor or  
 23 stamping agent relied on in reporting to the department, the  
 24 commission, and the attorney general.

25 (c) The attorney general may require a distributor or a tobacco  
 26 product manufacturer to submit additional information to  
 27 determine whether a tobacco product manufacturer is in  
 28 compliance with this chapter. The additional information may  
 29 include samples of the packaging or labeling of each of the tobacco  
 30 product manufacturer's brand families.

31 Sec. 18. The department and the commission shall disclose to the  
 32 attorney general any information received under this chapter and  
 33 requested by the attorney general for purposes of determining  
 34 compliance with and enforcing this chapter. The department, the  
 35 commission, and the attorney general:

36 (1) shall share with each other the information received under  
 37 this chapter; and

38 (2) may share the information received under this chapter with  
 39 other federal, state, or local agencies only for purposes of  
 40 enforcing this chapter or a corresponding law in another state.

41 Sec. 19. The attorney general may require a nonparticipating  
 42 manufacturer to provide from the financial institution that holds  
 43 the nonparticipating manufacturer's qualified escrow fund for  
 44 purposes of complying with this chapter proof of:

45 (1) the amount of money in the qualified escrow fund being  
 46 held on behalf of the state;

47 (2) the dates of any deposits into the qualified escrow fund; and

48 (3) the dates and amounts of any withdrawals from the  
 49 qualified escrow fund.

50 Sec. 20. The department or the attorney general may adopt rules  
 51 under IC 4-22-2 to implement this chapter, including rules to:

(1) require a tobacco product manufacturer subject to section 13(c) of this chapter to make required escrow deposits in installments during the calendar year in which the sales covered by the deposits are made; or

(2) produce information sufficient to enable the attorney general to determine the adequacy of the amount of an installment deposit described in subdivision (1).

Sec. 21. (a) This section applies in addition to or instead of any other civil or criminal penalty.

(b) The department may revoke or suspend the license of a distributor, a stamping agent, or any other person that violates section 15 of this chapter.

(c) Each:

(1) stamp affixed;

(2) sale of cigarettes; or

(3) offer or possession of cigarettes for sale;

in violation of section 15 of this chapter constitutes a separate violation.

(d) The department or the commission may impose a civil penalty that does not exceed the greater of:

(1) five hundred percent (500%) of the retail value of the cigarettes sold; or

(2) five thousand dollars (\$5,000);

for each violation of section 15 of this chapter.

Sec. 22. Whenever the department or the commission discovers any cigarettes that have been sold, offered for sale, or possessed for sale in Indiana in violation of section 15 of this chapter, the department or the commission may seize and take possession of the cigarettes. The seized cigarettes shall be forfeited to the state. The department or the commission shall destroy the seized cigarettes.

Sec. 23. The attorney general may seek an injunction to:

(1) restrain a threatened or an actual violation of section 15 of this chapter by a stamping agent; and

(2) compel the stamping agent to comply with sections 15, 17(b), and 17(c) of this chapter.

Sec. 24. (a) A person shall not:

(1) sell or distribute; or

(2) acquire, hold, own, possess, transport, import, or cause to be imported;

cigarettes that the person knows or should know are intended for distribution or sale in Indiana in violation of section 15 of this chapter.

(b) A person who violates this section commits a Class C misdemeanor.

Sec. 25. A person who violates section 15 of this chapter engages in an unfair and deceptive business practice.

Sec. 26. A determination by the attorney general to not list in or to remove from a directory under section 14 of this chapter a brand family or a tobacco product manufacturer is subject to review only by the Marion County circuit court.

Sec. 27. The department shall not issue a registration certificate

under IC 6-7-1-16(a) to a distributor unless the distributor certifies in writing that the distributor will comply with this chapter.

**Sec. 28. In an action brought by the state to enforce this chapter, the state may recover:**

- (1) the costs of investigation;
- (2) expert witness fees;
- (3) the costs of the action; and
- (4) attorney's fees.

**Sec. 29. If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the treasurer of state for deposit in the Indiana tobacco master settlement agreement fund under IC 4-12-1-14.3.**

**Sec. 30. All:**

- (1) civil penalties imposed under; and
- (2) judgments for violations of;

**this chapter shall be deposited in the enforcement and administration fund established under IC 7.1-4-10-1.**

SECTION 16. IC 35-46-1-10, AS AMENDED BY P.L.204-2001, SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) A person who knowingly:

- (1) sells or distributes tobacco to a person less than eighteen (18) years of age; or
- (2) purchases tobacco for delivery to another person who is less than eighteen (18) years of age;

commits a Class C infraction. For a sale to take place under this section, the buyer must pay the seller for the tobacco product.

(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco.

(c) The following defenses are available to a person accused of selling or distributing tobacco to a person who is less than eighteen (18) years of age:

- (1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph, showing that the purchaser or recipient was of legal age to make the purchase.
- (2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1, or a similar card issued under the laws of another state or the federal government, showing that the purchaser or recipient was of legal age to make the purchase.
- (3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused person sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

(e) As used in this section, "distribute" means to give tobacco to another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-4(c), civil penalties collected under this section must be deposited in the **Richard D. Doyle** youth tobacco education and enforcement fund (IC 7.1-6-2-6).

SECTION 17. IC 35-46-1-10.2, AS AMENDED BY P.L.1-2001, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10.2. (a) A retail establishment that sells or distributes tobacco to a person less than eighteen (18) years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco product. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).

(2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of one hundred dollars (\$100).

(3) If the retail establishment at that specific business location has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(4) If the retail establishment at that specific business location has had three (3) or more citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of five hundred dollars (\$500).

A retail establishment may not be issued a citation or summons for a violation of this section more than once every twenty-four (24) hours for each specific business location.

(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco.

(c) The following defenses are available to a retail establishment accused of selling or distributing tobacco to a person who is less than eighteen (18) years of age:

(1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph showing that the purchaser or recipient was of legal age to make the purchase.

(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1 or a similar card issued under the laws of another state or the federal government showing that the purchaser or recipient was of legal age to make the purchase.

(3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused retail establishment sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

(e) As used in this section, "distribute" means to give tobacco to another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the **Richard D. Doyle** youth tobacco education and enforcement fund (IC 7.1-6-2-6).

SECTION 18. IC 35-46-1-11.3, AS AMENDED BY P.L.204-2001, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.3. (a) This section does not apply to advertisements that are less than fourteen (14) square feet and posted:

- (1) at street level in the window or on the exterior of a business property or establishment where tobacco products are manufactured, distributed, or sold; or
- (2) on vehicles.

(b) This section does not apply to advertisements that are placed on a fixed, permanent marquee sign that is located on the retailer's property where tobacco products are sold.

(c) A person may not advertise or cause to be advertised tobacco products on a billboard or an outdoor advertisement where the tobacco advertising occupies an area that exceeds fourteen (14) square feet. The alcohol and tobacco commission may adopt rules under IC 4-22-2 to determine how to measure the tobacco product advertising on a sign that contains both tobacco product advertising and advertising that is not tobacco related. The rules may not allow the frame of the sign or other structural parts that only serve to support the sign to be included in the tobacco advertising measurement.

(d) A person who violates this section commits a Class C infraction. An advertisement that is in violation of this section must be removed not more than ten (10) days after a citation or summons has been issued. Notwithstanding IC 34-28-5-4(c), if an advertisement that is in violation of this section is not removed not more than ten (10) days after a citation or summons has been issued, a civil judgment for an infraction committed under this section must include a civil penalty of

one hundred dollars (\$100) for each day that the advertisement was in violation of this section.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the **Richard D. Doyle** youth tobacco education and enforcement fund (IC 7.1-6-2-6).

SECTION 19. IC 35-46-1-11.5, AS AMENDED BY P.L.1-2001, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.5. (a) Except for a coin machine that is placed in or directly adjacent to an entranceway or an exit, or placed in a hallway, a restroom, or another common area that is accessible to persons who are less than eighteen (18) years of age, this section does not apply to a coin machine that is located in the following:

(1) That part of a licensed premises (as defined in IC 7.1-1-3-20) where entry is limited to persons who are at least eighteen (18) years of age.

(2) Private industrial or office locations that are customarily accessible only to persons who are at least eighteen (18) years of age.

(3) Private clubs if the membership is limited to persons who are at least eighteen (18) years of age.

(4) Riverboats where entry is limited to persons who are at least twenty-one (21) years of age and on which lawful gambling is authorized.

(b) As used in this section, "coin machine" has the meaning set forth in IC 35-43-5-1.

(c) Except as provided in subsection (a), an owner of a retail establishment may not:

(1) distribute or sell tobacco by use of a coin machine; or

(2) install or maintain a coin machine that is intended to be used for the sale or distribution of tobacco.

(d) An owner of a retail establishment who violates this section commits a Class C infraction. A citation or summons issued under this section must provide notice that the coin machine must be moved within two (2) business days. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the owner of the retail establishment has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).

(2) If the owner of the retail establishment has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(3) If the owner of the retail establishment has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days for the same machine, the coin machine shall be removed or impounded by a law enforcement officer having jurisdiction where the violation occurs.

An owner of a retail establishment may not be issued a citation or summons for a violation of this section more than once every two (2) business days for each business location.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the **Richard D. Doyle** youth tobacco education and enforcement fund established under IC 7.1-6-2-6.

SECTION 20. IC 35-46-1-11.7, AS AMENDED BY P.L.1-2001, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11.7. (a) A retail establishment that has as its primary purpose the sale of tobacco products may not allow an individual who is less than eighteen (18) years of age to enter the retail establishment.

(b) An individual who is less than eighteen (18) years of age may not enter a retail establishment described in subsection (a).

(c) A retail establishment described in subsection (a) must conspicuously post on all entrances to the retail establishment a sign in boldface type that states "NOTICE: It is unlawful for a person less than 18 years old to enter this store."

(d) A person who violates this section commits a Class C infraction. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the person has not been cited for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).

(2) If the person has had one (1) violation in the previous ninety (90) days, a civil penalty of one hundred dollars (\$100).

(3) If the person has had two (2) violations in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(4) If the person has had three (3) or more violations in the previous ninety (90) days, a civil penalty of five hundred dollars (\$500).

A person may not be cited more than once every twenty-four (24) hours.

(e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the **Richard D. Doyle** youth tobacco education and enforcement fund established under IC 7.1-6-2-6.

SECTION 21. [EFFECTIVE JULY 1, 2003] **(a) Notwithstanding IC 24-3-5.4-13(a), as added by this act, a tobacco manufacturer shall file a certification under IC 24-3-5.4-13, as added by this act, not later than August 15, 2003.**

**(b) Notwithstanding IC 24-3-5.4-14(a), as added by this act, the attorney general shall publish a directory under IC 24-3-5.4-14, as added by this act, not later than October 1, 2003.**

**(c) This SECTION expires December 31, 2003.**

(Reference is to EHB 1788 as reprinted April 1, 2003.)

**Conference Committee Report**  
**on**  
**Engrossed House Bill 1788**

**S**igned by:

---

Representative Hasler  
Chairperson

---

Senator Weatherwax

---

Representative Murphy

---

Senator Lewis

**House Conferees**

**Senate Conferees**